

<p style="text-align: center;"><b>Minutes of the Special Town Meeting</b> <b>September 24, 2012</b></p>
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Moderator George Knittel opened the Special Town Meeting on Monday, September 24, 2012, at 7:15pm at the Ayer Shirley Middle School Auditorium, 1 Hospital Road, Shirley. Retired Fire Chief Alpee Levesque led the meeting in the Pledge of Allegiance. The Town Clerk had sworn the following people to serve as tellers: Mike Detillion, Alpee Levesque Jr., Joe Stanislaw, and James Thibault. Barbara Masiero and Marjorie Marcinkewicz checked voters into the meeting. 127 voters had checked in by 7:45.

The Town Clerk confirmed for the Moderator that the warrant had been duly posted in accordance with state law and town bylaw. The Moderator asked members of the audience to obtain a copy of the warrant at the check-in area if they had not picked up a copy on their way in. He advised that the Town Meeting would be referring to information printed in warrant and sufficient copies were available for all attendees.

Courtney Hernandez moved to take Article 9 first. Motion seconded.

***Hand vote: Moderator declared the motion approved by a 2/3 majority.***

Joyce Reischutz, one of Shirley's members of the Regional School Committee, advised the meeting that no amendments could be made since Ayer would be voting on the same amendment to the Regional School District Agreement at the their town meeting on October 22.

Superintendent Carl Mock, a Shirley resident, presented an explanation of the article. Both towns would share proportionately and equitably on both the High School and Middle School debt.

**Article 9. Amend Regional School District Agreement (Assessment of Debt Service)**

Armand Deveau moved that the Town vote to amend Section VI, Subsection C.1.c. of the Ayer-Shirley Regional School District Agreement by adding a new Subsection (3), as set forth in the Warrant. David Swain seconded the motion.

The wording printed in the warrant was as follows:

(3) Contingent upon the approval by the Towns of Ayer and Shirley of the incurring of debt in the amount approved by the Regional School Committee in fiscal year 2013 for the renovation of the District's high school located in Ayer (referred to in the balance of this paragraph as the "High School Debt"), and contingent upon the successful passage of a Proposition 2½ debt exclusion by the voters of each town relative to said High School Debt, the following will occur. Commencing in fiscal year 2014, the assessment of capital costs on account of the High School Debt to the Town of Ayer will be increased by an additional annual amount (referred to in the balance of this paragraph as the "additional capital cost assessment") above the assessment to Ayer on account of said High School Debt that would normally occur under Section VI, subsection C,1,c,(2) of the Regional Agreement, and the assessment of capital costs assessed to the Town of Shirley on account of the High School Debt shall be decreased by a like amount in each fiscal year. Said additional capital cost assessment will be equal to a portion of the debt service payments that are due to be paid by the Town of Shirley in that same fiscal year on bonds issued for the original construction of the school which was formerly known as

the Shirley Middle School. Said additional capital cost assessment will be calculated consistent with Section VI, subsection C,1,c,(2) of the Regional Agreement when that language is applied to the Middle School, and this additional capital cost adjustment shall continue so long as the school formerly known as the Shirley Middle School is used as the District's middle school, and until the bonds of the Town of Shirley attributable to said school are paid off. In fiscal year 2014, and in any subsequent fiscal year in which the amount of Shirley's capital cost assessment on account of the High School Debt would be reduced to less than zero, the amount of Ayer's capital cost assessment on the High School Debt that would have otherwise reduced Shirley's capital cost assessment below zero on account of the High School Debt shall be deposited into a separate stabilization fund of the District established in accordance with Chapter 71, Section 16G½ of the General Laws, the establishment of which is hereby approved, and will be applied by the District in future fiscal years to reduce capital cost assessments on the High School Debt to the Town of Shirley in such amounts as the District School Committee determines, after seeking input from the Selectmen of the Town of Shirley.

*A hand counted vote was taken.*

**Yes: 113**

**No: 3**

*Moderator declared the motion passed by a majority vote.*

#### **Article 1. Pay Prior Year's Bill**

Armand Deveau moved that the Town vote to appropriate \$47,313.18 to be expended by the department indicated in the Warrant, to pay a bill of a prior fiscal year for the purpose described in the Warrant, such appropriation to be provided by transfer from the General Stabilization Fund. David Swain Seconded.

The article as printed in the warrant indicated that the \$47,313.18 was to be expended by Public Buildings, from Line Item 192, to pay the FY12 Town sewer assessment in lieu of a betterment.

<u>Department</u>	<u>Line Item</u>	<u>Vendor</u>	<u>Goods/Services</u>	<u>Amount (\$)</u>
Public Buildings	192	Sewer Commission	Sewer Assessment	\$47,313.18

Principal Assessor Rebecca Boucher advised the meeting that a determination had been received from the Department of Revenue that the town was obligated to pay the Assessment. She showed a copy of the letter on the overhead screen so that the meeting could see it.

*Hand vote: Moderator declared a unanimous vote in favor of the motion. Passed.*

#### **Article 2. Pay Prior Year's Bill**

Armand Deveau moved that the Town vote to appropriate \$2,571.61 to be expended by the department indicated in the Warrant, to pay a bill of a prior fiscal year for the purpose described in the Warrant, such appropriation to be provided by transfer from Ambulance User Fees. David Swain Seconded.

The article as printed in the warrant indicated that the \$2,571.61 was to be expended from the Ambulance Enterprise Fund, Line Item 231, to pay Townsend Ford for ambulance repairs.

<u>Department</u>	<u>Line Item</u>	<u>Vendor</u>	<u>Goods/Services</u>	<u>Amount (\$)</u>
Ambulance Ent. Fund	231	Townsend Ford	Ambulance Repair	2,571.61

Repairs had been done to the Ambulance in June and the bills had come after the end of the fiscal year.

The Board of Selectmen and Finance Committee were in favor of the article.

***Hand vote: Moderator declared a unanimous vote in favor of the motion. Passed.***

### **Article 3. Amend Appropriations for the Current Fiscal Year**

Armand Deveau moved that the Town vote to raise and appropriate \$111,202.62, to be expended by the departments indicated, in order to supplement the specified Line Items in their respective budgets for the current fiscal year as voted under Article 4 of the May 21, 2012 Annual Town Meeting. David Swain Seconded.

Moderator Knittel reviewed the budget line item by line item, giving meeting attendees the option to place a hold on lines they wanted further discussion on.

Holds were not requested for the following items:

<b>Line Item #</b>	<b>Department/Account Name</b>	<b>FY13 Approved</b>	<b>Amendment</b>	<b>FY13 Revised</b>
124	Personnel-Expenses	\$200.00	\$10,000.00	\$10,200.00
192	Public Buildings-Town Sewer Payment in Lieu of Betterment	\$0.00	\$46,538.00	46,538.00
<b>Line Item #</b>	<b>Department/Account Name</b>	<b>FY13 Approved</b>	<b>Amendment</b>	<b>FY13 Revised</b>
711	General Fund Debt Service/Long-term Principal, Debt Excluded, 6/28/11	\$221,767.00	\$20,938.00	\$242,705.00
711	General Fund Debt Service/Long-term Interest, Debt Excluded, 6/28/11	\$53,935	\$324.28	\$54,259.28
711	General Fund Debt Service/Short-term Interest, Debt Excluded, 6/28/11	\$129,921	(\$23,904.98)	\$106,016.02
711	General Fund Debt Service/Short-term Interest, Not Excluded	\$0.00	\$523.07	\$523.07
711	General Fund Debt Service/Long-term Principal, Not Excluded	\$0.00	\$500.00	\$500.00
711	General Fund Debt	\$0.00	\$283.25	\$283.25

	Service/Long-term Interest, Not Excluded			
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Holds were requested for the following line items:

Line	Dept/Account Name	FY13 Approved	Amendment	FY13 Revised
211	Police Department-Salaries, Wages & Hourly (Union)	\$588,021.00	\$28,257.00	\$616,278.00
211	Police Department-Expenses	\$92,010.00	\$3,095.00	\$95,105.00
422	DPW-Wages Hourly, Public Works Assistant	\$16,468.00	\$6,177.00	\$22,645.00
541	Council on Aging-Wages Hourly, Director	\$18,792.00	\$6,677.00	\$25,469.00
611	Library-Salary, Appointed Position	\$43,270.00	\$4,652.00	\$47,922.00
914	Group Health Insurance- Expenses (for Police Officer)	\$653,195.00	\$7,143.00	\$662,719.00

The moderator advised that we would vote on the “non-held” items first and then vote on the held items after discussing them.

Armand Deveau moved that the Town vote to raise and appropriate \$55,201.62 to be expended by the departments indicated, in order to supplement the specified Line Items in their respective budgets for the current fiscal year as voted under Article 4 of the May 21, 2012 Annual Town Meeting. David Swain seconded.

***Hand vote on the Non-Held Items: Moderator declared a unanimous vote in favor of the motion. Passed.***

The “held” items were then discussed.

Moderator Knittel advised that he would bundle the three lines related to the police officer’s position, since they were interdependent. This would be line item 211 Police Dept Salaries, Wages & Hourly (Union), 211 Police Department – Expenses, and 914 Group Health Insurance – Expenses.

Moderator Knittel asked for an explanation of the held Police line items. Selectmen Deveau reviewed statistics from the police department showing that the need for police officers has grown since last year. The added cost was to fund a police officer for the remainder of the year. He also advised that the only way that we could add a police officer and know that we’d have funding for the position going forward was to increase our taxes by passing a Proposition 2 ½ Override.

Mike Swanton of the Finance Committee also expressed concern regarding the sustainability of the funding for this position and for the other increases in hours proposed in the budget. By increasing taxes through overrides, we would create a revenue stream to fund the positions going forward. Therefore, the Finance Committee along with the Board of Selectmen were recommending overrides for the police position and the increased hours for existing positions.

**Amendment 1:** Mike Swanton moved to amend the amounts appropriated for the three items related to the police officer in Article 3 - line item #211 Police Department Salaries and Police Department Expenses and #914 Group Health Insurance – for a total of \$38,495.00 to be subject to a Proposition 2 ½ Override. Motion seconded.

Selectmen David Swain explained that the total annualized cost of the police officer is \$73,495. This would be the amount on the ballot for the position at the Override Election. The higher amount needs to be on the ballot so that there would be enough funding for the whole next year.

Principal Assessor Rebecca Caldbeck advised that if the override passes, the difference between the two amounts would not be used in the budget this year, but would be available in the tax base next year.

Moderator Knittel confirmed that the town meeting was only being asked to appropriate the funding for Dec 1 until June 30<sup>th</sup> which was \$38,495.

Rachel Sizer of Squannacook Rd expressed concern that the funds passed via the override could be used differently next year. In summary, the meeting was advised that the voters at future town meetings would have the ultimate say about how the funds would be spent.

Chip Guercio of Common Rd. asked for the annualized amounts of all the positions that could be on the override. Chief Administrative Officer David Berry advised that the annualized cost of all of the positions would be \$113,166.

***Hand Vote: Majority vote in favor of Amendment 1***

**Amendment 2:** Mike Swanton moved to amend Article 3, line 422, DPW-Wages Hourly, amount appropriated by \$6,177.00 subject to a Proposition 2 ½ Override. Motion seconded.

John Oelfke of Groton Rd advocated for not making the \$17,506 needed for the increased hours for the DPW, the Council on Aging and the Library subject to Proposition 2 ½ overrides. Funding was available for this year. The positions were existing, not new, and the hours could be cut back next fiscal year should funding not be available.

Mike Swanton responded that the approach recommended does not show favoritism for one position over another, is the most fiscally prudent course of action, and avoids potential unemployment claims that could stem from reducing peoples' hours next year.

Various boards defended their requests for the additional hours, asserting that they were, indeed, needed. Discussion ensued whether the appropriate way to fund the hours was through an override or existing revenue. There were proponents on both sides.

Before the warrant was signed, the Selectmen had initially voted to recommend that the additional hours not be subject to a proposition 2 ½ override. However, they had since revoted the issue and now agreed with the Finance Committee that the hours should be subject to an override.

The additional cost for health benefits that would be available to the Council on Aging Director, since the position would be increased to more than 20 hours per week, was not added into the budget. John Oelfke advised that he did not intend to sign up for them. However, Selectmen Deveau advised that the amount that would be on the Prop 2 ½ Override question would include the cost of benefits. That would make the position sustainable for next year.

***Counted Hand Vote: 57 in favor of the amendment , 36 against the amendment. Moderator declared a majority vote in favor of amendment. Amendment 2 passed.***

**Amendment 3:** Mike Swanton moved to amend Article 3, line 541, Council on Aging – Wages Hourly, amount appropriated by \$6,677.00 subject to a Proposition 2 ½ Override. Motion seconded.

At 9:10, the meeting adjourned for 5 minutes so that Shirley Public Access could change the disk to continue recording the meeting. At 9:15, the meeting resumed.

John Oelfke, as Council on Aging Director, and Beth Quinty, as Chair of the Library Trustees, explained that they had both come to annual town meeting with these requests for additional hours. They had been asked to wait until the fall when it was expected that additional revenue would be available to cover them. Since that revenue was available, they urged the meeting not to make these hours subject to a proposition 2 ½ override.

Kevin Hayes made a motion to move the question on the amendment. ***Hand Vote: Unanimous vote in favor of moving the question.***

***Hand Vote on Amendment 3: amendment failed to get majority vote.***

The moderator explained that the original motion for line item # 541 the Council on Aging stood unamended. No further requests for discussion were requested for that line, so the moderator called for discussion of held line item #611.

Holly Haase of School Street asked if line item #422 could be reconsidered. Initially the Moderator said that no, that our town meeting policy prevented it. Jacquie Esielionis of Oakes Landing and Bryan Dumont of Lawton Rd. urged the moderator to rethink his decision since people seemed to be confused about what would happen after the last vote. John Oelfke of Groton Rd agreed and pointed out that past policy was to allow reconsideration as long as it was the same night of town meeting and there was no other article on the floor.

Moderator Knittel advised that it was not allowable.

However, Board of Selectmen Chair Armand Deveau, after conferring with town counsel, advised the moderator that in referring to the Town Meeting Procedures authored by Mr. Knittel reconsideration was possible.

Armand Deveau moved to reconsider Line item #422. Motion seconded.

Moderator Knittel reviewed the Procedures and advised that he had never done this before in the budget, since it can lead to numerous calls for reconsideration and delays in the meeting. The moderator read the four requirements of the procedure.

- a. Reconsideration or rescission may be moved by any voter at any time there is no other article on the floor, subject to the following restrictions.
- b. There should be a realistic expectation that, after further debate, a new vote may produce a different result.
- c. If a motion for reconsideration or rescission is approved by the voters, the matter will be the first order of business at the next session of the meeting. If there is no further session of the meeting, the matter will be taken up after all other articles have been considered and disposed of.
- d. A motion to reconsider or rescind may not be made for articles considered and disposed of at a previous session of the meeting.

The Moderator advised that he would allow a motion to reconsider after we had finished with all the held line items in this article. That would follow the rules, which he could not make exceptions to, but provide an opportunity for those who wish to revote #422.

The moderator explained that the original motion for line item # 541 the Council on Aging stood unamended at \$6,677 since the amendment to make it subject to a proposition 2 ½ override had failed. He asked the meeting if there was anything further to be said about #541 before moving on to #611 and then to a motion for reconsideration of #422.

Receiving no requests to amend or discuss #541, the moderator called for discussion of line item #611.

**Amendment 4:** Mike Swanton moved to amend Article 3, line 611, Library – Salary Appointed Position amount appropriated by \$4,652.00 subject to a Proposition 2 ½ Override.

***Hand Vote: Moderator declared amendment failed for lack of a majority vote.***

John Russell of Weatherbee Road pointed out that the figures in line #914 of the budget did not add up. Town Accountant Bobbi Jo Colburn advised that the FY13 Revised amount was incorrect and should have been \$660,338. The FY13 Approved amount and the Amendment amount were correct. The Moderator thanked Mr. Russell for pointing that out.

**Motion to Reconsider:** Bryan Dumont moved to reconsider line item #422 DPW Wages Hourly, Public Works Assistant. Motion Seconded.

When asked if the earlier motion to reconsider made and seconded by Armand Deveau was already on the floor, the moderator advised that he had not accepted the motion at the

time it was made. He had advised that it would need to be made later, so Mr. Deveau's motion was not on the floor, Mr. Dumont's motion was.

The moderator reviewed the conditions for reconsideration and advised that they had been met. There was no other article (or line item in this case) on the floor. The moderator believed that there was a realistic expectation that after further debate a new vote may produce a different result. We were taking up the motion at the end: in the case of reconsidering an article, it would be after all other articles; in the case of line items, it would be after all other line items.

The moderator called for further discussion of line item #422.

It was pointed out to the moderator that we still needed to vote on the motion to reconsider. The moderator called for the vote.

***Hand Vote on Motion to Reconsider: Moderator declared a majority vote in favor of the motion to reconsider.***

The moderator advised that we were now back where we had approved making the increase in line item #422 subject to a Proposition 2 ½ Override.

John Rounds of Benjamin Road asked the moderator if he wanted a motion to annul the motion we had approved. Initially, the moderator said yes. However, Town Counsel, Gary Brackett, advised the moderator that by voting to reconsider, the meeting had brought us back to the point where the motion to make it subject to an override was on the floor. The moderator confirmed to Mr. Rounds that it was instead as if we had not voted on the motion yet.

John Rounds made a motion to move the question. Motion seconded. The moderator advised the meeting that if they did not want further discussion, he would accept the motion to move the question.

***Hand Vote on Motion to Move the Question: Moderator declared passed by 2/3 majority.***

The moderator reviewed the amendment, explaining that a yes vote made it subject to a prop 2 ½ override and a no vote made it not subject to an override.

***Hand Vote on the Amendment making the \$6,177 of line item #422 subject to an override: Moderator declared a majority vote against the motion. In reconsidering the motion, the motion failed, and the \$6,177 stood unamended.***

The moderator advised that we would then vote on the "held" items.

Armand Deveau moved that the Town vote to raise and appropriate \$56,001 to be expended by the departments indicated, in order to supplement the specified Line Items in their respective budgets for the current fiscal year as voted under Article 4 of the May 21, 2012 Annual Town Meeting, with \$38,495 of said amount to be subject to a Proposition 2½ override.

***Hand vote: Moderator declared the motion passed by majority vote in favor.***



Moderator asked the meeting whether they wanted to stay to finish the meeting or adjourn until the next night at 7:15pm. **Moderator declared a majority vote in favor of staying to finish the business of the meeting.**

**Article 4. Appropriate for Purchase of New Police Cruiser for FY13**

Armand Deveau moved that the Town vote to raise and appropriate the sum of \$33,500 to purchase a new police cruiser, to be expended by the Police Department. David Swain Seconded.

The Board of Selectmen and Finance Committee were in favor of the article.

*Hand vote: Moderator declared 2/3 majority in favor of the motion. Passed.*

**Article 5. Appropriate for New Pick-up Truck for FY13**

Armand Deveau moved that the Town vote to raise and appropriate the sum of \$40,250 to purchase a new pick-up truck, to be expended by the Department of Public Works. David Swain Seconded.

The Board of Selectmen and Finance Committee were in favor of the article.

*Hand vote: Moderator declared a unanimous vote in favor of the motion. Passed.*

**Article 6. Appropriate for Repair of Drainage onto Harvard Road**

Armand Deveau moved that the Town vote to raise and appropriate the sum of \$15,000 to repair drainage structures within a Town easement on the property located at 71 Harvard Road, to be expended by the Department of Public Works. David Swain Seconded.

The Board of Selectmen and Finance Committee were in favor of the article.

*Hand vote: Moderator declared a unanimous vote in favor of the motion. Passed.*

**Article 7. Amend Article VII, Section 14 of the Town By-Laws by Replacing Existing Section 14**

Armand Deveau moved that the Town vote to amend Article VII, Section 14 of the Town By-Laws by replacing existing Section 14, as set forth in the Warrant. David Swain Seconded.

The new section 14 as printed in the Warrant was follows:

No person shall drink from or possess an open container of any alcoholic beverage as defined in Chapter 138, Section 1 of the Massachusetts General Laws, while on, in, or upon any public way, sidewalk, or upon any way to which the public has a right of access, or a public park, playground, or any private land or place without the consent of the owner or person in control of such public or private land or place. All alcoholic beverages being used in violation of this bylaw shall be seized and safely held until final

adjudication of the charges against the person or persons arrested or summoned before the court. Upon final adjudication of the charges against the person or persons arrested or summoned, and upon direction of the adjudicating authority, such alcoholic beverage shall be returned to the person entitled to lawful possession. Such alcoholic beverages must be claimed by said person with seven (7) days after final adjudication, or they shall be destroyed by the seizing authority. Violation of this bylaw is punishable by a fine of not less than fifty (\$50) dollars for the first offense, and by a fine of not more than one hundred (\$100) dollars for a second or subsequent offenses.

The Board of Selectmen and Finance Committee were in favor of the article.

***Hand vote: Moderator declared a unanimous vote in favor of the motion. Passed.***

**Article 8. Amend Article VII of the Town By-Laws by Adding New Section 16**

Armand Deveau moved that the Town vote to amend Article VII of the Town By-Laws by adding a new Section 16, as set forth in the Warrant. David Swain Seconded.

The new section 16 as printed in the Warrant was as follows:

No person shall smoke, ingest, or otherwise use or consume marijuana or tetrahydrocannabinol (as defined in Chapter 94C, Section 1 of the Massachusetts General Bylaws, as amended) while in or upon any street, sidewalk, public way, footway, passageway, stairs, bridge, park, playground, beach, recreation area, boat landing, public building, school house, school grounds, cemetery, parking lot, or any area owned by or under the control of the Town; or in or upon any bus or other passenger conveyance operated by a common carrier; or in any place accessible to the public. The fine for violation of this bylaw shall be three hundred dollars (\$300) for each offense. Any penalty imposed under this bylaw shall be in addition to any civil penalty imposed under Chapter 94C, Section 32L of the Massachusetts General Laws, as amended.

The Board of Selectmen and Finance Committee were in favor of the article.

***Hand vote: Moderator declared a 2/3 majority in favor of the motion. Passed.***

**Article 10. Transfer Land for Sale/Conveyance by Selectmen (Parcels 82-C-6 and 121-B-1)**

Armand Deveau moved that the Town vote to transfer to the Board of Selectmen, for the purpose of sale or conveyance, the care and custody of Parcels 82-C-6 and 121-B-1, and authorize the Board of Selectmen to sell or convey said property. David Swain Seconded.

The Board of Selectmen and Finance Committee were in favor of the article.

***Hand vote: Moderator declared a unanimous vote in favor of the motion. Passed.***

**Article 11. Transfer to the General Stabilization Fund for FY13**

Armand Deveau moved that the Town vote to transfer **\$46,208.68** to the General Stabilization Fund by a transfer from raise and appropriate. David Swain Seconded.

The Board of Selectmen and Finance Committee were in favor of the article.

***Hand vote: Moderator declared a unanimous vote in favor of the motion. Passed.***

**Article 12. Transfer to the Capital Stabilization Fund for FY13**

Armand Deveau moved that the Town vote to transfer **\$46,208.68** to the Capital Stabilization Fund by a transfer from raise and appropriate. David Swain Seconded.

The Board of Selectmen and Finance Committee were in favor of the article.

***Hand vote: Moderator declared a unanimous vote in favor of the motion. Passed.***

David Swain moved to dissolve the meeting. Motion seconded.

***Voice vote: Moderator declared a majority vote in favor of the motion. Passed.***

The moderator declared the meeting dissolved at 10:25pm

Respectfully Submitted,

Amy R. McDougall  
Shirley Town Clerk